




28 Liberty Street, 30th Floor • New York, NY 10005

Telephone: (212) 300-0375 • Facsimile: (212) 481-1333 • www.fslawfirm.com

**APPLICATION GRANTED
SO ORDERED** 
**VERNON S. BRODERICK
U.S.D.J.**

The post-discovery conference scheduled for January 12, 2024 is hereby adjourned. The parties are directed to submit an amended case management plan, with updated discovery deadlines, by January 23, 2024.

Dated: January 9, 2024

VIA CM/ECF

Hon. Vernon S. Broderick, U.S.D.J.
U.S. District Court for the
Southern District of New York
40 Foley Square, Courtroom 518
New York, New York 10007

Re: *Smith v. Akela Contracting LLC et al.*, No. 22 Civ. 01185 (VSB)(KHP)

Dear Judge Broderick:

We represent Plaintiff Anthony Smith (“Plaintiff”), the current opt-in plaintiffs (collectively, the “Opt-In Plaintiffs”, and, together with Plaintiff, the “Plaintiffs”), and the putative class in the above referenced matter. We write, jointly with Defendants JDV Safety Inc. (“JDV”), All Eyes on Safety Inc. (“AES”), and Brian McDermott (“McDermott”, and, together with JDV and AES, the “JDV Defendants”), Defendants/Third-Party Plaintiffs Akela Contracting LLC (“Akela”), Akela Contracting/Civetta Cousins JV, Joint Venture, LLC (the “JV”), and Karine Williams (“Williams”, and, together with Akela and the JV, the “Akela Defendants”), and Third-Party Defendant The City of New York (the “City”, and, together with Plaintiffs, the JDV Defendants, and the Akela Defendants, the “Parties”), to provide a status report and request an adjournment of the January 12, 2024 telephonic post-discovery conference.

1. Background & Current Status of the Case.

This is a collective and class action brought by Plaintiffs and the Akela Defendants and JDV Defendants seeking owed wages in the forms of overtime and prevailing wages under New York law. Pursuant to the original Case Management Plan, as so ordered by the Court on November 30, 2022, fact discovery and expert discovery in this matter were to have been concluded by November 1, 2023, and December 31, 2023, respectively. (ECF No. 72).

Prior to this deadline, the parties to the prime action, Plaintiffs, the Akela Defendants, and the JDV Defendants (collectively, the “Prime Parties”), have worked together, diligently and productively, to complete most of the paper discovery required among them, having duly exchanged written discovery requests and responses, as well as productions of responsive documents. The Court also so-ordered the Prime Parties’ stipulation §216(b) notice under the FLSA. The FLSA opt-in period concluded on October 23, 2023. To date, there are 24 opt-in plaintiffs who have joined the action. By agreement, these opt-ins are answering written discovery, and have by and large completed this process (with any outstanding responses being produced on a rolling basis).

Fitapelli & Schaffer, LLP

January 8, 2024

Page 2

During this time, the Akela Defendants filed a Third-Party Complaint against The City of New York. To date, the City's Motion to Dismiss the Third-Party Complaint is fully briefed and pending determination. The Akela Defendants the City have likewise served discovery requests and responses upon one another. As referenced in Section 2 of the parties Joint Status Letter to the Court, dated November 29, 2023 (ECF No. 139), in light of the City's responses to Akela Defendants' discovery requests, Akela Defendants shall, in short order, issue a letter to the City concerning all remaining outstanding discovery.

In October 2023, the Parties began the process of advising the Court that additional discovery time would be necessary and requested an in-person conference with Magistrate Judge Parker to address this request. The Parties appeared before Judge Parker on December 7, 2023. At this conference, the Parties addressed several outstanding discovery topics, including, but not limited to, how much additional fact discovery time would ultimately be needed and the ongoing discovery disputes between the Akela Defendants and the City. The conference before Judge Parker was a productive one. Currently, the Parties are conferring to determine exactly how much additional fact discovery time will be sought, and will be provide Judge Parker with a proposed Case Management Plan this month.

Currently, the Parties are preparing for a Settlement Conference before Judge Parker on February 7, 2024. In the event the Settlement Conference is unsuccessful, the Parties plan to begin depositions shortly after this date.

Given the current state of the case, the Parties respectfully request that the telephonic post-discovery conference set for January 12, 2024 be adjourned to a date to be determined after the issuance of a revised Case Management Plan. This is the first request for an adjournment of this conference.

* * *

We thank the Court for its time and attention to our request.

Sincerely,

/s/ Armando A. Ortiz

Armando A. Ortiz

CC:

All Counsel of Record